

Message Text

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64

ORIGIN EB-07

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

UNCLAS STATE 172337

E.O. 11652:N/A

TAGS: EAIR, BR

SUBJECT: CIVAIR: CAB ORDERS VARIG SCHEDULE FILING

1. TEXT OF SUBJECT CAB ORDER OF JULY 21 FOLLOWS BELOW:

""VARIG", S.A. (VIACAO AEREA RIO-GRANDENSE) IS THE HOLDER OF A FOREIGN AIR CARRIER PERMIT, ISSUED PURSUANT TO ORDER 70-9-157, WHICH AUTHORIZES IT TO PERFORM FOREIGN AIR TRANSPORTATION WITH RESPECT TO PERSONS, PROPERTY, AND MAIL, OVER FOUR ROUTES BETWEEN A POINT OR POINTS IN BRAZIL, VIA SPECIFIED INTERMEDIATE POINTS TO MIAMI, FLORIDA, WASHINGTON, D.C., NEW YORK, NEW YORK, CHICAGO, ILLINOIS, AND TO LOS ANGELES, CALIFORNIA AND HONOLULU, HAWAII AND BEYOND TO TOKYO, JAPAN; AND TO ENGAGE IN CHARTER TRIPS SUBJECT TO PART 212 OF THE BOARD'S ECONOMIC REGULATIONS. THERE IS CURRENTLY IN EFFECT AN AIR TRANSPORT SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF BRAZIL (HEREAFTER "AGREEMENT").

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"THE GOVERNMENT OF BRAZIL HAS ISSUED VARIOUS LICENSES TO PAN AMERICAN WORLD AIRWAYS, INC. AUTHORIZING SCHEDULED AIR SERVICES BETWEEN SPECIFIC POINTS IN THE UNITED STATES AND BRAZIL, VIA INTERMEDIATE POINTS.

"AN EXCHANGE OF NOTES DATED DECEMBER 1 AND 2, 1958 PROVIDES THAT A SCHEDULE WHICH DOES NOT REFLECT AN INCREASE IN AN AIRLINE'S TOTAL CAPACITY SHALL BE SUBMITTED BY THE INTERESTED AIRLINE DIRECTLY TO THE AERONAUTICAL AUTHORITIES OF THE OTHER GOVERNMENT FOR INFORMATION IN ADVANCE OF THE EFFECTIVE DATE. ON JANUARY 13, 1975 PAN AMERICAN SUBMITTED A SCHEDULE TO THE AERONAUTICAL AUTHORITIES OF THE GOVERNMENT OF BRAZIL PROVIDING FOR THE SUBSTITUTION OF B-727 AIRCRAFT FOR B-707 AND B-747 EQUIPMENT ON THE RIO DE JANEIRO-SAO PAULO SECTOR OF FOUR EXISTING NEW YORK-BRAZIL FLIGHTS AND FOR THE USE OF CONGONHAS AIRPORT IN SAO PAULO AS THE TERMINATION POINT FOR THOSE FLIGHT IN LIEU OF VIRACOPOS AIRPORT. SUBSEQUENTLY, PAN AMERICAN WAS INFORMED THAT THE BRAZILIAN AERONAUTICAL AUTHORITIES WOULD REJECT ITS SCHEDULES BECAUSE: (1) THE FLIGHT MAKING A CHANGE OF GAUGE AT A POINT IN BRAZIL WOULD NOT PROCEED BEYOND BRAZIL TO A POINT IN A THIRD COUNTRY; AND (2) CONGONHAS AIRPORT WAS NOT OPEN TO INTERNATIONAL LONG-HAUL AIRLINE SERVICES.

"ON FEBRUARY 21, 1975 THE UNITED STATES GOVERNMENT ADVISED THE GOVERNMENT OF BRAZIL OF ITS OBJECTIONS. IN SO DOING, IT STATED THAT SECTION VI OF THE ANNEX OF THE AGREEMENT PROVIDES THAT THE DESIGNATED AIRLINES MAY, FOR THE ONWARD CARRIAGE OF TRAFFIC, INTRODUCE A DIFFERENT SIZE AIRCRAFT FROM THAT EMPLOYED ON THE EARLIER STAGE OF THE SAME ROUTE. IT WAS OBSERVED THAT THIS SECTION APPARENTLY WAS DRAFTED IN SPECIFIC CONTEMPLATION THAT THE ONWARD FLIGHT MIGHT TERMINATE IN THE COUNTRY WHERE THE CHANGE OF GAUGE TAKES PLACE; OTHERWISE, THE EXPLICIT EXCLUSION OF CABOTAGE TRAFFIC FROM SUCH FLIGHTS WOULD HAVE BEEN UNNECESSARY, SINCE THE AGREEMENT, AS STATED WITH ITS INTRODUCTION, DEALS ONLY WITH INTERNATIONAL SERVICES.

"IT WAS FURTHER POINTED OUT THAT SECTION III OF THE ANNEX
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TO THE AGREEMENT STATES THAT ALL DESIGNATED CARRIERS WILL HAVE COMMERCIAL ENTRY TO ALL AIRPORTS OPEN TO INTERNATIONAL TRAFFIC AT THE POINTS ENUMERATED AND ON EACH OF THE ROUTES SPECIFIED IN THE ROUTE SCHEDULE TO THE AGREEMENT. SEVERAL FOREIGN AIRLINES, INCLUDING THE BRAZILIAN DESIGNATED CARRIER, OPERATE INTERNATIONAL FLIGHTS INTO AND OUT OF CONGONHAS AIRPORT. SINCE INTERNATIONAL SERVICES CONTINUE TO BE OPERATED TO AND FROM CONGONHAS AIRPORT, THE UNITED STATES GOVERNMENT ADVISED THE GOVERNMENT OF BRAZIL OF ITS POSITION THAT PAN AMERICAN, AS THE DESIGNATED CARRIER, ALSO HAS THE RIGHT TO ACCESS TO THAT AIRPORT.

"THE UNITED STATES GOVERNMENT ALSO POINTED OUT THAT

PARAGRAPH 1 OF THE "PROTOCOL OF SIGNATURE" TO THE AGREEMENT PROVIDES THAT THE AIR CARRIERS OF THE CONTRACTING PARTIES SHALL ENJOY "FAIR AND EQUAL OPPORTUNITY" FOR OPERATIONS ON THE ROUTES SPECIFIED IN THE ROUTE SCHEDULE TO THE AGREEMENT. AS THE BRAZILIAN DESIGNATED CARRIER OPERATES AND TERMINATES AT CONGONHAS AIRPORT A NUMBER OF ITS INTERNATIONAL FLIGHTS TO AND FROM THE UNITED STATES, IT ENJOYS A DISTINCT COMPETITIVE ADVANTAGE IN THAT THE UNITED STATES DESIGNATED CARRIER IS NOT PERMITTED BY BRAZIL TO OFFER THE SAME SERVICE. THE UNITED STATES GOVERNMENT NOTED ITS VIEW THAT THIS SITUATION VIOLATES BOTH THE AGREEMENT AS WELL AS THE CHICAGO CONVENTION OF 1944.

"FINALLY, AS REFLECTED IN THE EXCHANGE OF NOTES OF DECEMBER 1 AND 2, 1958, THE GOVERNMENT OF BRAZIL AGREED THAT THE PRIOR APPROVAL OF SCHEDULES AND THE UNILATERAL IMPOSITION OF CAPACITY CONTROLS WOULD NOT BE ENFORCED BY EITHER COUNTRY EFFECTIVE JULY 1, 1958. THE UNITED STATES NOTED THAT THIS PROVISION CLEARLY INDICATES THAT NEITHER CONTRACTING PARTY HAS THE UNILATERAL RIGHT TO REJECT THE FILING OF A CHANGE IN SCHEDULE SUBMITTED BY THE DESIGNATED CARRIER OF THE OTHER CONTRACTING PARTY.

"IN SPITE OF THE OBJECTION OF THE UNITED STATES GOVERNMENT, ON FEBRUARY 24, 1975 PAN AMERICAN RECEIVED A COMMUNICATION FROM THE AERONAUTICAL AUTHORITIES OF THE GOVERNMENT OF UNCLASSIFIED

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BRAZIL STATING THAT ITS SCHEDULES HAD NOT BEEN APPROVED. ON APRIL 1, 1975 THE UNITED STATES GOVERNMENT REITERATED ITS OBJECTIONS.

"UPON CONSIDERATION OF THESE MATTERS, THE BOARD FINDS THAT THE GOVERNMENT OF BRAZIL HAS TAKEN UNILATERAL RESTRICTIVE ACTION AGAINST PAN AMERICAN'S OPERATIONS PRIOR TO CONSULTATIONS AND OVER THE OBJECTION OF THE UNITED STATES GOVERNMENT, WHICH HAS IMPAIRED, LIMITED, AND DENIED OPERATING RIGHTS PROVIDED FOR IN THE UNITED STATES-BRAZIL AIR TRANSPORT SERVICES AGREEMENT. THE BOARD FURTHER FINDS THAT IN THE PRESENT CIRCUMSTANCES THE PUBLIC INTEREST REQUIRES THAT THE BOARD EXERCISE ITS POWERS PURSUANT TO PART 213 OF THE ECONOMIC REGULATIONS TO REQUIRE THE FILING OF EXISTING VARIG SCHEDULES, AND THOSE WHICH MAY LATER BE PROPOSED, TO DETERMINE WHETHER THE OPERATION OF SUCH SERVICES, OR ANY PART THEREOF, MAY BE CONTRARY TO APPLICABLE LAW OR MAY ADVERSELY AFFECT THE PUBLIC INTEREST.

"ACCORDINGLY, IT IS ORDERED THAT:

"1. VARIG FILE WITH THE CIVIL AERONAUTICS BOARD
(ATTENTION: DIRECTOR, BUREAU OF INTERNATIONAL AFFAIRS)
WITHIN SEVEN DAYS AFTER SERVICE OF THIS ORDER AN
ORIGINAL AND THREE COPIES OF ANY AND ALL OF ITS EXIST-
ING SCHEDULES OF SERVICE BETWEEN BRAZIL AND THE
UNITED STATES, INCLUDING SCHEDULES OF SERVICE VIA INTER-
MEDIATE POINTS, WHICH SHALL INCLUDE:

"(A) THE TYPE OF EQUIPMENT USED (INCLUDING THE NUMBER OF
SEATS, BY CLASS OF SERVICE, ON AIRCRAFT NORMALLY ASSIGNED,
BY FLIGHT);

"(B) THE FREQUENCY AND DAY(S) OF OPERATIONS OF EACH
FLIGHT;

"(C) THE TIMES OF ARRIVAL AND DEPARTURE AT EACH
POINT; AND

"(D) THE SPECIFIC AIRPORT SERVED AT EACH POINT;
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"2. VARIG SHALL FILE WITH THE CIVIL AERONAUTICS BOARD
(ATTENTION: DIRECTOR, BUREAU OF INTERNATIONAL AFFAIRS) AN
ORIGINAL AND THREE COPIES OF ANY AND ALL PROPOSED SCHED-
ULES OF SERVICES BETWEEN BRAZIL AND THE UNITED STATES,
INCLUDING THE INFORMATION NOTED IN ORDERING PARAGRAPH 1
ABOVE, THE PROPOSED EFFECTIVE DATE OF SUCH SCHEDULES,
AND THE PROPOSED TERMINATION DATE OF SUCH SCHEDULES
(IF DETERMINED), AT LEAST 30 DAYS PRIOR TO INAUGURATION
OF SERVICE; AND

"3. THIS ORDER SHALL BE SERVED ON VARIG AND THE AMBASSADOR
OF BRAZIL IN WASHINGTON, D.C.

"BY THE CIVIL AERONAUTICS BOARD." KISSINGER

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Message Attributes

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